

calendar month following the month in which this Act is enacted [Dec. 1987] and shall apply only with respect to diving duty performed on or after that date.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 320, 907 of this title.

§ 305. Special pay: hardship duty pay

(a) SPECIAL PAY AUTHORIZED.—A member of a uniformed service who is entitled to basic pay may be paid special pay under this section at a monthly rate not to exceed \$300 while the member is performing duty in the United States or outside the United States that is designated by the Secretary of Defense as hardship duty.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the provision of hardship duty pay under subsection (a), including the specific monthly rates at which the special pay will be available.

(Pub. L. 87-649, Sept. 7, 1962, 76 Stat. 465; Pub. L. 88-132, §12(a), Oct. 2, 1963, 77 Stat. 217; Pub. L. 90-623, §3(4), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 95-485, title VIII, §804(b)(1), Oct. 20, 1978, 92 Stat. 1620; Pub. L. 102-25, title VII, §702(b)(1), (c), Apr. 6, 1991, 105 Stat. 117; Pub. L. 105-85, div. A, title VI, §619(a)-(c)(1), Nov. 18, 1997, 111 Stat. 1789, 1790; Pub. L. 105-261, div. A, title VI, §617(a), (c)(1), Oct. 17, 1998, 112 Stat. 2041.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
305(a)	37:237.	Oct. 12, 1949, ch. 681, §206, 63 Stat. 811; May 20, 1958, Pub. L. 85-422, §1(7), 72 Stat. 125, June 30, 1954, ch. 432, §729, 68 Stat. 355.
305(b)	37:237a.	

In subsection (a), the words “Except as provided by subsection (b) of this section” are inserted for clarity. The words “is also . . . entitled” are substituted for the words “shall, in addition thereto . . . be entitled”. The words “any place outside the United States, or in Alaska or Hawaii” are substituted for the words “beyond the continental limits of the United States or in Alaska”, since, under the source statute, Hawaii was beyond the continental limits of the United States, and the United States, as defined in section 101(1) of this revised title, would otherwise include Alaska and Hawaii. This interpretation conforms to the opinion of the Comptroller General, B-138956, April 20, 1959 (38 Comp. Gen. 710).

In subsection (b), the words “Appropriation of” are substituted for the words “of the funds appropriated to”. The words “may not be paid” are substituted for the words “no part . . . shall be available for the payment”. The words “member of a uniformed service” are substituted for the words “person in the military service” to conform to subsection (a). The words “Puerto Rico” are inserted for clarity, since the source statute was applicable to that place. The words “Virgin Islands” are inserted, since that unincorporated territory is not covered by the word “possession”. The word “Territory” is omitted as obsolete.

AMENDMENTS

1998—Pub. L. 105-261, §617(c)(1), struck out “location” after “duty” in section catchline.

Subsec. (a). Pub. L. 105-261, §617(a)(1), substituted “performing duty in the United States or outside the United States that is designated by the Secretary of Defense as hardship duty.” for “on duty at a location

in the United States or outside the United States designated by the Secretary of Defense as a hardship duty location.”

Subsec. (b). Pub. L. 105-261, §617(a)(4), redesignated subsec. (d) as (b).

Pub. L. 105-261, §617(a)(2), struck out heading and text of subsec. (b). Text read as follows: “Appropriations of the Department of Defense may not be paid, as hardship duty location pay under subsection (a), to a member of a uniformed service who is a resident of a State, Puerto Rico, the Virgin Islands, a possession, or a foreign country and who is serving in that State, Puerto Rico, the Virgin Islands, that possession, or that foreign country, as the case may be.”

Subsec. (c). Pub. L. 105-261, §617(a)(2), struck out heading and text of subsec. (c). Text read as follows: “A member receiving special pay under section 305a of this title may not be paid hardship duty location pay under subsection (a) for the same period of service.”

Subsec. (d). Pub. L. 105-261, §617(a)(4), redesignated subsec. (d) as (b).

Pub. L. 105-261, §617(a)(3), substituted “hardship duty pay” for “hardship duty location pay”.

1997—Pub. L. 105-85, §619(c)(1), substituted “hardship duty location pay” for “while on duty at certain places” in section catchline.

Subsec. (a). Pub. L. 105-85, §619(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Except as provided by subsections (b) and (c), under regulations prescribed by the President, an enlisted member of a uniformed service who is entitled to basic pay may, while on duty at a designated place outside the 48 contiguous States and the District of Columbia, be paid special pay at the following monthly rates:

Pay grade	Monthly rate
E-9	\$22.50
E-8	22.50
E-7	22.50
E-6	20.00
E-5	16.00
E-4	13.00
E-3	9.00
E-2	8.00
E-1	8.00..”

Subsec. (b). Pub. L. 105-85, §619(b)(1), inserted heading and substituted “as hardship duty location pay” for “as foreign duty pay” in text.

Subsec. (c). Pub. L. 105-85, §619(b)(2), inserted heading and substituted “hardship duty location pay under subsection (a)” for “special pay under this section” in text.

Subsec. (d). Pub. L. 105-85, §619(b)(3), added subsec. (d).

1991—Subsec. (a). Pub. L. 102-25 struck out “of this section” after “subsection (b) and (c)”.

Subsec. (b). Pub. L. 102-25 struck out “of this section” after “subsection (a)”.

1978—Pub. L. 95-485, §804(b)(1)(C), substituted “on duty” for “on sea duty or duty” in section catchline.

Subsec. (a). Pub. L. 95-485, §804(b)(1)(A), inserted reference to subsec. (c) of this section and struck out provision entitling an enlisted member of a uniformed service who is entitled to basic pay to special pay while on sea duty.

Subsec. (c). Pub. L. 95-485, §804(b)(1)(B), added subsec. (c).

1968—Subsec. (a)(2). Pub. L. 90-623 substituted “48 contiguous States” for “contiguous 48 States”.

1963—Pub. L. 88-132 substituted “while on sea duty or duty at certain places” for “sea and foreign duty” in section catchline.

Subsec. (a). Pub. L. 88-132 designated existing provisions as cl. (1) and substituted provisions of cl. (2) permitting special pay for an enlisted member of a uniformed service while on duty at a designated place outside the contiguous 48 States and the District of Columbia for former provision entitling such member to

special pay while on duty in any place outside the United States, or in Alaska or Hawaii.

Subsec. (b). Pub. L. 88-132 substituted “a State, Puerto Rico, the Virgin Islands, a possession, or a foreign country and who is serving in that State, Puerto Rico, the Virgin Islands, that possession, or that foreign country” for “Alaska, Hawaii, Puerto Rico, the Virgin Islands, or a possession, unless that member is serving in an area outside Alaska, Hawaii, the Virgin Islands, or a possession, of which he is a resident”.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 804(b)(3) of Pub. L. 95-485 provided that: “The amendments made by this subsection [amending this section] shall take effect on October 1, 1978.”

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90-623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88-132 effective Oct. 1, 1963, see section 14 of Pub. L. 88-132, set out as a note under section 201 of this title.

SAVINGS PROVISION

Section 12(b) of Pub. L. 88-132 provided that: “Notwithstanding subsection (a) [amending this section], an enlisted member who, on the day before the effective date of this Act [Oct. 1, 1963], was permanently assigned to duty at a place outside the United States or in Alaska or Hawaii, shall, during the remaining period of that assignment, but not after that place is designated for the purpose of section 305(a)(2) of title 37, United States Code, be paid the basic pay to which he was entitled on that date plus special pay under section 305 of title 37, United States Code, whenever qualified thereunder as that section was in effect on the day before the effective date of this Act, if the total of that basic pay and that special pay is more than the basic pay to which he would otherwise be entitled during that period under section 2 of this Act [amending section 203 of this title].”

TRANSITION PROVISION

Section 619(e) of Pub. L. 105-85 provided that: “Until such time as the Secretary of Defense prescribes regulations regarding the provision of hardship duty location pay under section 305 of title 37, United States Code, as amended by this section, the Secretary may continue to use the authority provided by such section 305, as in effect on the day before the date of the enactment of this Act [Nov. 18, 1997], to provide special pay to enlisted members of the uniformed services on duty at certain places.”

SEA DUTY PERFORMED BETWEEN OCTOBER 1, 1978, AND SEPTEMBER 30, 1981

Section 804(c) of Pub. L. 95-485 provided that: “Any individual who on September 30, 1978, is an enlisted member of a uniformed service shall be eligible to receive special pay under section 305(a)(1) of title 37, United States Code, as in effect on September 30, 1978, for any period of sea duty performed by such individual during the period beginning on October 1, 1978, and ending on September 30, 1981, for which such individual does not receive special pay under section 305a of such title (as added by subsection (a)).”

EXECUTIVE ORDER NO. 10168

Ex. Ord. No. 10168, Oct. 11, 1950, 15 F.R. 6877, as amended by Ex. Ord. No. 10821, May 20, 1959, 24 F.R. 4123; Ex. Ord. No. 10989, Jan. 23, 1962, 27 F.R. 727; Ex. Ord. No. 11120, Oct. 2, 1963, 28 F.R. 10631, which con-

cerned regulations relating to special pay for sea duty and duty at certain places, was revoked by Ex. Ord. No. 11157, June 22, 1964, 29 F.R. 7973, formerly set out as a note under section 301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 907 of this title.

§ 305a. Special pay: career sea pay

(a) AVAILABILITY OF SPECIAL PAY.—A member of a uniformed service who is entitled to basic pay is also entitled, while on sea duty, to special pay at the applicable rate under subsection (b).

(b) RATES; MAXIMUM.—The Secretary concerned shall prescribe the monthly rates for special pay applicable to members of each armed force under the Secretary's jurisdiction. No monthly rate may exceed \$750.

(c) PREMIUM.—A member of a uniformed service entitled to career sea pay under this section who has served 36 consecutive months of sea duty is also entitled to a career sea pay premium for the thirty-seventh consecutive month and each subsequent consecutive month of sea duty served by such member. The monthly amount of the premium shall be prescribed by the Secretary concerned, but may not exceed \$350.

(d) REGULATIONS.—The Secretary concerned shall prescribe regulations for the administration of this section for the armed force or armed forces under the jurisdiction of the Secretary. The entitlements under this section shall be subject to the regulations.

(e) DEFINITION OF SEA DUTY.—(1) In this section, the term “sea duty” means duty performed by a member—

(A) while permanently or temporarily assigned to a ship and—

(i) while serving on a ship the primary mission of which is accomplished while under way;

(ii) while serving as a member of the off-crew of a two-crewed submarine; or

(iii) while serving as a member of a tender-class ship (with the hull classification of submarine or destroyer); or

(B) while permanently or temporarily assigned to a ship and while serving on a ship the primary mission of which is normally accomplished while in port, but only during a period that the ship is away from its homeport.

(2) The Secretary concerned may designate duty performed by a member while serving on a ship the primary mission of which is accomplished either while under way or in port as “sea duty” for purposes of this section, even though the duty is performed while the member is permanently or temporarily assigned to a ship-based staff or other unit not covered by paragraph (1).

(3) For the purpose of determining the years of sea duty with which a member may be credited for purposes of this section, the term “sea duty” also includes duty performed after December 31, 1988, by a member while permanently or temporarily assigned to a ship or ship-based staff and while serving on a ship on which the member would be entitled, during a period that the ship